IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

Crl.MC.No. 533 of 2007()

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CC.615/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, ATTINGAL

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PETITIONER: ACCUSED:

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SHAJAHAN, AGED 32 YEARS,
S/O. ABUBAKKAR, HAVING PERMANENT RESIDENCE AT
SHAHIN VILLA, MUNDAYILKONAM, NAGAROOR P.O.,
KILIMANOOR, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.V.VENUGOPALAN NAIR

RESPONDENTS: COMPLAINANT:

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SHAJINA BEEVI, D/O. ALIKUNJU,
VATTAVILA VEEDU, KABARADI NAGAR, KOITHOOKONAM P.O.
POTHENKODU, THIRUVANANTHAPURAM DISTRICT.

R1 BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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Crl.M.C.No. 533 of 2007

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Dated this the 28th day of February, 2007

**O R D E R**

The petitioner faces indictment in a prosecution under Section 498A I.P.C. Cognizance has been taken on the basis of a final report submitted by the police. The petitioner had been released on bail earlier. As the petitioner could not appear before the learned Magistrate, non-bailable warrant is pending against him. He is employed abroad. He is returning to India on 2.3.2007. The petitioner is willing to appear before the learned Magistrate and apply for bail. He apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is in these circumstances prayed that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he applies for bail. The non-bailable warrant may not be executed till 9.3.2007, it is further prayed.

2. I find no merit in the prayer of the petitioner. It is certainly for the petitioner to appear before the learned Magistrate and

explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

3. This Crl.M.C. is accordingly dismissed, but with the observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself. In the peculiar facts and circumstances of this case I accept the request of the learned counsel for the petitioner and direct that the non-bailable warrant shall not be executed for a period of one week from the date on which the petitioner reaches India, i.e. till 9.3.2007.

**(R. BASANT)**
Judge

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